**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,**
**JAIPUR BENCH, JAIPUR.**

**S. B. CIVIL MISC. APPEAL NO. 580/2006**

**BABULAL & ORS.**
**v**
**NANAK RAM**

**DATE OF JUDGMENT: 4th APRIL, 2007.**

**Hon'ble Mr. Justice R. S. Chauhan**

**Mr. Tarun Jain for the appellants.**
**Mr. L.L. Gupta for the respondent.**

**By Court:**

**This appeal challenges the judgment dated 22.11.05 passed by the District Judge, Sawai Madhopur whereby the learned Judge has dismissed the application filed by the appellants for grant of Probate Certificate in their favour.**

**The brief facts of the case are that the appellants claim to be the legal heirs of one Prahlad Singh. According to them Prahlad Singh expired on 30.6.95 in village Pavli. Prior to his death on 26.8.95 he had executed a Will on a plain paper in favour of the appellants. On the basis of the said Will on 17.7.95 the land which was owned by Prahlad Singh was transferred in the name of the appellants. However, on 16.8.95 the name of the respondent was also added by Tehsildar, Khandar. Therefore, an appeal was filed before the Court of Sub-Divisional Officer. However, the learned**

**S.D.O., directed the appellants to get a probate issued in their name. Hence, the appellants filed an application for seeking a probate in their favour. According to them they are in possession of the land which belonged to Prahlad Singh.**

**The respondent, Nanak Ram and another respondent Shishupal Singh (who died during the proceedings), filed their replies and claimed that the appellants have intentionally not made them parties in the probate proceedings. According to them, Prahlad Singh did not write any Will on 26.8.95. In fact, he had written a Will on 26.5.92 which was also registered in the Sub-Registrar's Office. It was on the basis of the Will dated 26.5.92 that the Tehsildar, Khandar had mutated the land in the name of the respondents. They further claimed that they are the sons of Prahlad Singh from his first wife, Ganga. They further alleged that the land is in their possession. Lastly, they claimed that the Will dated 26.5.92 is a forged document as the signature of Prahlad Singh had been forged on the said document.**

**On the basis of the pleadings of the parties, the learned Judge framed three issues. Since Shishupal Singh died during the proceedings and left no legal heirs, therefore, the suit abated against him. In order to support their case the appellants examined four witnesses and submitted three documents. On the other hand, the**

**respondents examined two witnesses and also submitted three documents. After going through the oral and documentary evidence and after hearing both the parties as mentioned above, vide judgment dated 22.11.06 the learned Judge dismissed the application for seeking probate. Hence this appeal before this court.**

**A bare perusal of the impugned order clearly reveals that since the respondents had challenged the veracity and genuineness of the Will dated 28.6.95 (Ex.A-1), it was sent for expert opinion to the Police Investigation and Development Bureau, Home Ministry, Railway Board Building, Simla. According to their report the signature of Prahlad Singh did not match with his known signatures and admitted signatures from other documents. Therefore, the learned Judge has correctly concluded that Prahlad Sing's signatures were forged upon Ex.A-1, the Will dated 28.6.95.**

**Moreover, the said Will is written on plain piece of paper and has not been registered. Furthermore, the said Will was allegedly drafted just four days before the death of Prahlad Singh. Lastly, there is ample evidence on record to show that there was a litigation between appellant No.1, Babu Lal and Prahlad Singh, the father. Considering the fact that there was litigation pending between the two, it is extremely unlikely that the deceased would have written a Will just four days prior to his death, leaving his**

**moveable and immoveable property in the name of the appellant, while depriving his other children of the right to the said properties. Therefore, the learned Judge has rightly concluded that no probate can be granted on the basis of a forged Will.**

**In the result, there is no force in this appeal. It is, hereby, dismissed.**

**( R.S. CHAUHAN ) J.**

**MRG.**